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CHELAN COUNTY
COMMUNITY DEVELOPMENT

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: SDP 2019-007
Administering Agency Chelan County Department of Community Development

Type of Permits: ☒ Shoreline Substantial Development Permit

Action: ☐ Approved ☒ Denied

Date of Action: August 22, 2019

Date Mailed to DOE/AG

Pursuant to Chapter 90.58 RCW and the Shoreline Master Program of Chelan County, the following permit was requested by:

Sharon Snitily and David Simmer
PO Box 4373
Wenatchee, WA 98807-4373

This is an application for a shoreline substantial development permit to install underground conduit in the east 1,100 feet of Brae Burn Road within the existing right-of-way. Installation of the conduit will require the excavation of a trench approximately three feet wide and four feet deep for the 1,100 foot length of the project. The purpose of the proposal is to supply electrical power, telephone service, and fiber cable to properties along the road. Once the conduit has been installed Chelan County PUD would pull power, fiber cable, and telephone cable through the conduit. Installation of the electrical service would also require the installation of up to five above-ground transformers, depending on future electrical service demand and use. One transformer would be expected to be installed with the initial extension of electrical power at 13600 Brae Burn Road.

Upon the following property East 1100 ft Brae Burn Road.

Within 200 feet of the Lake Wenatchee and/or its associated wetlands.

The project would be within a shoreline of statewide significance (RCW 90.58.030). The project will be located within an rural shoreline environment designation.

The following Shoreline Master Program provisions are applicable to this development: Sections 7, 9, 11, 16, 21, 27 and 29.

FINDINGS OF FACT

1. The Applicants are Sharon Snitily and David Simmer, PO Box 4373, Wenatchee, WA 98807-4373.
2. The owner of the property is Chelan County.
3. Project location is East 1100 ft of Brae Burn Road, Leavenworth, WA 98826.
4. The proposed development is not located within an Urban Growth Area.
5. The Comprehensive Plan designation & zoning for the subject property is RR5 - Rural Residential/Resource - 1 Dwelling Unit per 5 Acres.
6. This property is part of the Brae Burn Subdivision and is located within the FEMA designated floodway.
7. The proposed project is completely within the existing right-of-way and most of the affected area is currently cleared, but as stated in the JARPA, there is adjacent vegetation consisting of pine, fir, cottonwood, hawthorn, maple, and cedar tree species and a variety of shrubs, plants, and grasses. Minimal habitat is available on-site given and observed animals are few. The site is within a designated wetland on the National Wetlands
8. The property to the north of the subject property is in recreational use and is zoned RR5.
9. The property to the south of the subject property is in recreational use and is zoned RR5.
10. The property to the east of the subject property is in recreational use and is zoned RR5.
11. The property to west of the subject property is in recreational and residential use and is zoned RR5.
12. Construction of the conduit would begin upon receipt of all permits; electrical, phone, or cable fiber would be installed after the conduit is constructed as well as one transformer. Future transformers may be installed depending on demand.
13. Access is provided by SR 207. There would be some disruption of traffic flow on Brae Burn road during project construction. The project is required to comply with CCC, Chapter 8.26, Utilities on Rights-of-Way.
14. Once completed the project is unlikely to produce significant noise. Construction of the trench and installation of the conduit would create some construction-related noise. The project would be required to comply with CCC, Chapter 7.35, Noise Control.
15. The majority of the project would be installed underground, with the exception of the future installation of transformers when electrical service is extended.
16. Notice of Application was sent to properties owners within 300 feet of the proposal, jurisdictional agencies, and departments within the County on May 15, 2019. Comments were due June 21, 2019. The following provided comments:
 - 16.1 Chelan County PUD responded on June 21, 2019
 - 16.2 Confederated Tribes of the Colville Reservation responded on May 31, 2019
 - 16.3 Chelan - Douglas Health District responded on March 7, 2019
 - 16.4 Chelan County Public Works responded on May 15, 2019
17. The following agencies were notified but did not respond:
 - 17.1 WA State Department of Natural Resources
 - 17.2 WA State Department of Ecology
 - 17.3 WA Department of Fish and Wildlife
 - 17.4 US Department of Fish and Wildlife
 - 17.5 US Army Corps of Engineers

- 17.6 Department of Historic Preservation & Archaeology
- 17.7 Yakama Nation
- 17.8 Manson Community Council
- 18. No public comments were received.
- 19. The application materials were submitted on April 5, 2019.
- 20. A Determination of Completeness was issued on May 3, 2019.
- 21. The Notice of Application was provided May 15, 2019.
- 22. The Notice of Public Hearing was provided August 9, 2019.
- 23. The applicant submitted an Environmental Checklist. Pursuant to WAC 197-11 and RCW 43.21C of the State Environmental Policy Act (SEPA), environmental review and a threshold determination was completed, and a Determination of Non-Significance (DNS) was issued on August 9, 2019. The SEPA Checklist and DNS are included within the file of record and adopted herein by this reference.
- 24. The Comprehensive Plan was reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 5 land use designation for consistency with the proposed utility extension.
 - 24.1 The Comprehensive Plan states that the purpose of the Rural Residential/Resource 5 Designation is to provide...opportunities for small scale agricultural activities, and rural development consistent with the rural character and rural development provisions outline in goals and policies of the comprehensive plan. These areas may provide opportunities for protecting sensitive environmental areas and open space typical of a rural setting...
 - 24.2 The Hearing Examiner that the project is consistent with the Comprehensive Plan.
- 25. The project is not consistent with the Chelan County Multi-Jurisdictional Hazard Mitigation Plan in the following respects:
 - 25.1 The proposed development would make utility services available to recreational properties. It is located within a FEMA designated floodway and subject to the Floodway Hazard regulations of CCC 3.20. New structures are not allowed in the floodway according to CCC 3.20.240(2). Recreational vehicles are limited to temporary occupancy of a maximum of ten days in a sixty day period according to CCC 11.88.170 and may only be parked within the floodway for a maximum of 180 days per year according to CCC 3.20.230.CCC 3.20.240 does not allow encroachments into the floodway that could raise the base flood elevation.
 - 25.2 The proposal would extend utility service to recreational property owners, providing them a long-term benefit. However, the availability of permanent utility service encourages the presence of temporary structures, such as RVs, to be occupied and/or stored within the floodway beyond the limits of Chelan County zoning and the Floodway Hazard Regulations. Additional temporary structures potentially become hazards in two ways: if they are secured they can become encroachments that raise the base flood elevation, and if they are not secured they can become dangerous to life and property if swept away during a flood event. The potential long-term effects of this proposal make it inconsistent with the goals and objectives of the Chelan County Multi-Jurisdictional Natural Hazard Mitigation Plan.
- 26. The project is consistent with Chelan County Code (CCC) Section 11.04.020 in the following respects:
 - 26.1 Low Impact Utilities are permitted in the RR5 zone.

- 26.2 The proposed development is permitted.
27. The subject property does not contain protected habitat species or plants.
28. According to the Chelan County GIS mapping, the property is not located in an area with mapped geologic hazards.
29. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property is within a freshwater/forested shrub wetland. However, CCC 11.80.020(8) allows an exemption for maintenance, reconstruction, or repair of existing streets, highways and roads. Installation of the conduit within the right-of-way would fall under this exemption, so no wetland report is required.
30. According to the Federal Emergency Management Agency, FIRM panel # 5300150575 and 5300150775 the project lies within the FEMA designated floodway.
31. There are no known cultural resources on the subject property. Pursuant to CCSMP Section 27, developers shall notify local governments of any possible archaeological materials uncovered during excavation.
32. The project is consistent with CCC 3.20.180 in the following respects:
- 32.1 The applicant provides communication from the Chelan County PUD that indicates it is possible to construct the project to prevent water from accumulating in the electrical equipment during flooding conditions. The excavation of the site to install the conduit will be conducted at a time when there is low risk of flooding.
- 32.2 The Hearing Examiner finds that the project is consistent with the construction materials and methods requirements in a flood hazard area.
33. The project is consistent with CCC 3.20.190 (4) in the following respects:
- 33.1 Utility conduit will be placed underground except where transformers are necessary above ground.
- 33.2 The Hearing Examiner finds that the project is consistent with the undergrounding requirements for utilities in a flood hazard area.
34. The project is not consistent with CCC Section 3.20.240 (1) in the following respects:
- 34.1 The applicant did not provide evidence that there will not be encroachments in the floodway related to refilling of the conduit trench or placement of the transformers. There is no analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels.
- 34.2 The proposal is not in compliance with the regulations for development within the floodway.
35. The project is not consistent with Chelan County Shoreline Master Program (CCSMP) in the following respects:
- 35.1 The proposed development would make utility services available to recreational properties. It is located within a FEMA designated floodway and subject to the Floodway Hazard regulations of CCC 3.20. New structures are not allowed in the floodway according to CCC 3.20.240(2). Recreational vehicles are limited to temporary occupancy of a maximum of ten days in a sixty day period according to CCC 11.88.170 and may only be parked within the floodway for a maximum of 180 days per year according to CCC 3.20.230.CCC 3.20.240 does not allow encroachments into the floodway that could raise the base flood elevation.

- 35.2 The proposal would extend utility service to recreational property owners, providing them a long-term benefit. However, the availability of permanent utility service encourages the presence of temporary structures, such as RVs, to be occupied and/or stored within the floodway beyond the limits of Chelan County zoning and the Floodway Hazard Regulations. Additional temporary structures potentially become hazards in two ways: if they are secured they can become encroachments that raise the base flood elevation, if they are not secured they can become dangerous to life and property if swept away during a flood event. The potential long-term effects of this proposal make it inconsistent with goal 8.
36. The project is consistent with CCSMP Section 29.1 in the following respects:
- 36.1 The provisions of the SMA and WAC are met if the project meets the requirements of the CCSMP. The appropriate CCSMP requirements are addressed below. According to JARPA, question 6(g), the fair market value of the project is \$30,000. The project is not exempt from the substantial development permit requirement.
37. The project is consistent with CCSMP Section 29.4.1 (a) in the following respects:
- 37.1 The project is located in the public right-of-way and would extend electrical, telephone, and cable service to properties without it.
- 37.2 The installation of conduit does not affect local or statewide interests.
38. The project is consistent with CCSMP Section 29.4.1 (b) in the following respects:
- 38.1 The work will take place in the existing right-of-way which is already cleared for a roadway. Conduit and utilities will be placed underground with the exception of transformers.
- 38.2 The project will not impact the natural character of the shoreline.
39. The project is not consistent with CCSMP Section 29.4.1 (c) in the following respects:
- 39.1 The proposed development would make utility services available to recreational properties. It is located within a FEMA designated floodway and subject to the Floodway Hazard regulations of CCC 3.20. New structures are not allowed in the floodway according to CCC 3.20.240(2). Recreational vehicles are limited to temporary occupancy of a maximum of ten days in a sixty day period according to CCC 11.88.170 and may only be parked within the floodway for a maximum of 180 days per year according to CCC 3.20.230. CCC 3.20.240 does not allow encroachments into the floodway that could raise the base flood elevation.
- 39.2 The proposal would extend utility service to recreational property owners, providing them a long-term benefit. However, the availability of permanent utility service encourages the presence of temporary structures, such as RVs, to be occupied and/or stored within the floodway beyond the limits of Chelan County zoning and the Floodway Hazard Regulations. Additional temporary structures potentially become hazards in two ways: if they are secured they can become encroachments that raise the base flood elevation, if they are not secured they can become dangerous to life and property if swept away during a flood event. The long-term effects of this proposal are to increase the potential for flood hazard.
40. The project is consistent with CCSMP Section 29.4.1 (d) in the following respects:
- 40.1 The proposed project would be constructed to minimize disruption to the surrounding environment. It takes place in an existing right-of-way that is already cleared of vegetation.

- 40.2 The proposed development would not have a substantial impact on the resources and ecology of the shoreline.
41. The project is consistent with CCSMP Section 29.4.1 (e) in the following respects:
- 41.1 The project is in a publicly owned right-of-way that provides access to private properties.
- 41.2 The project will not impact public access to the shoreline.
42. The project is consistent with CCSMP Section 29.4.1 (f) in the following respects:
- 42.1 The subject property is in a publicly owned right-of-way that provides access to private properties with no public access.
- 42.2 The project would not affect public recreational opportunities, as the adjacent property is privately owned.
43. The project is consistent with CCSMP Section 29.4.2 in the following respects:
- 43.1 The proposal is not consistent with all of the requirements for shorelines of statewide significance.
- 43.2 Based on the above findings and conclusions, the Hearing Examiner finds the project to be inconsistent with the long-term benefit of shorelines of statewide significance.
44. The subject property is located within a floodway. Although the proposal has been designed to minimize impacts to allow the extension of electrical, phone, and cable service to recreational properties on Brae Burn Road, it does not meet the criteria of CCC 3.20.240(1). To meet these criteria the applicant must provide a hydraulic analysis showing that the proposal will not increase flood levels through encroachment. Encroachment is a significant issue in a floodway as it affects the base flood elevation, which can mean an increased risk of flooding beyond the floodway.
45. Additionally, the proposed action would increase the availability of utility service to lots that are limited to recreational uses by CCC 3.20. In the long-term utility availability is likely to result in increased encroachment or life and property hazards from the placement of temporary structures beyond the limits of Chelan County zoning or flood hazard regulations. This is inconsistent with the goals of the Shoreline Master Plan and with the standards for Shorelines of Statewide Significance as well as the goals and objectives of the Chelan County Multi-Jurisdiction Natural Hazard Mitigation Plan.
46. Staff reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended DENIAL of the application.
47. An open record public hearing after legal notice was provided was held on August 21, 2019.
48. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
49. Appearing and testifying on behalf of the applicant was David L. Simmer. Mr. Simmer testified that he was an agent of the property owner and was authorized to appear and speak on her behalf. Mr. Simmer's primary argument was that the inclusion of any matter within a floodway will automatically increase the elevation of any potential flood. Mr. Simmer also argued regarding prior projects that had been approved. Mr. Simmer indicated that this is the last 1,100 feet on Brae Burn to get power. Mr. Simmer did not offer any compelling evidence as to why this project complies with the requirements of the Chelan County Shoreline Master Program.
50. No member of the public testified at this hearing.


51. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
52. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.
3. The site of the subject proposal is in the Chelan County Comprehensive Plan Rural Residential/Resource 5 land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is not consistent with the Chelan County Code, Title 11.
5. The project design is not consistent with the Chelan County Shoreline Master Program requirements.
6. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

Denied this 22nd day of August, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the "date of receipt" as defined by Washington Law to file a petition for review with the Shorelines Hearings Board (for the shoreline permit) as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.

**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A
CONDITIONAL USE AND/OR VARIANCE PERMIT**

Date received by the Department _____

Approved _____

Denied _____

This conditional use/variance permit is approved / denied by the Department pursuant to Chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:
